

No. 13127

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United States  
Court of Appeals  
for the Ninth Circuit.

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INLAND MOTOR FREIGHT, INC., a Corporation  
and PACIFIC HIGHWAY TRANSPORT,  
INC., a Corporation,

Appellants,

vs.

ANCHOR CASUALTY COMPANY, a Corpora-  
tion,

Appellee.

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Transcript of Record

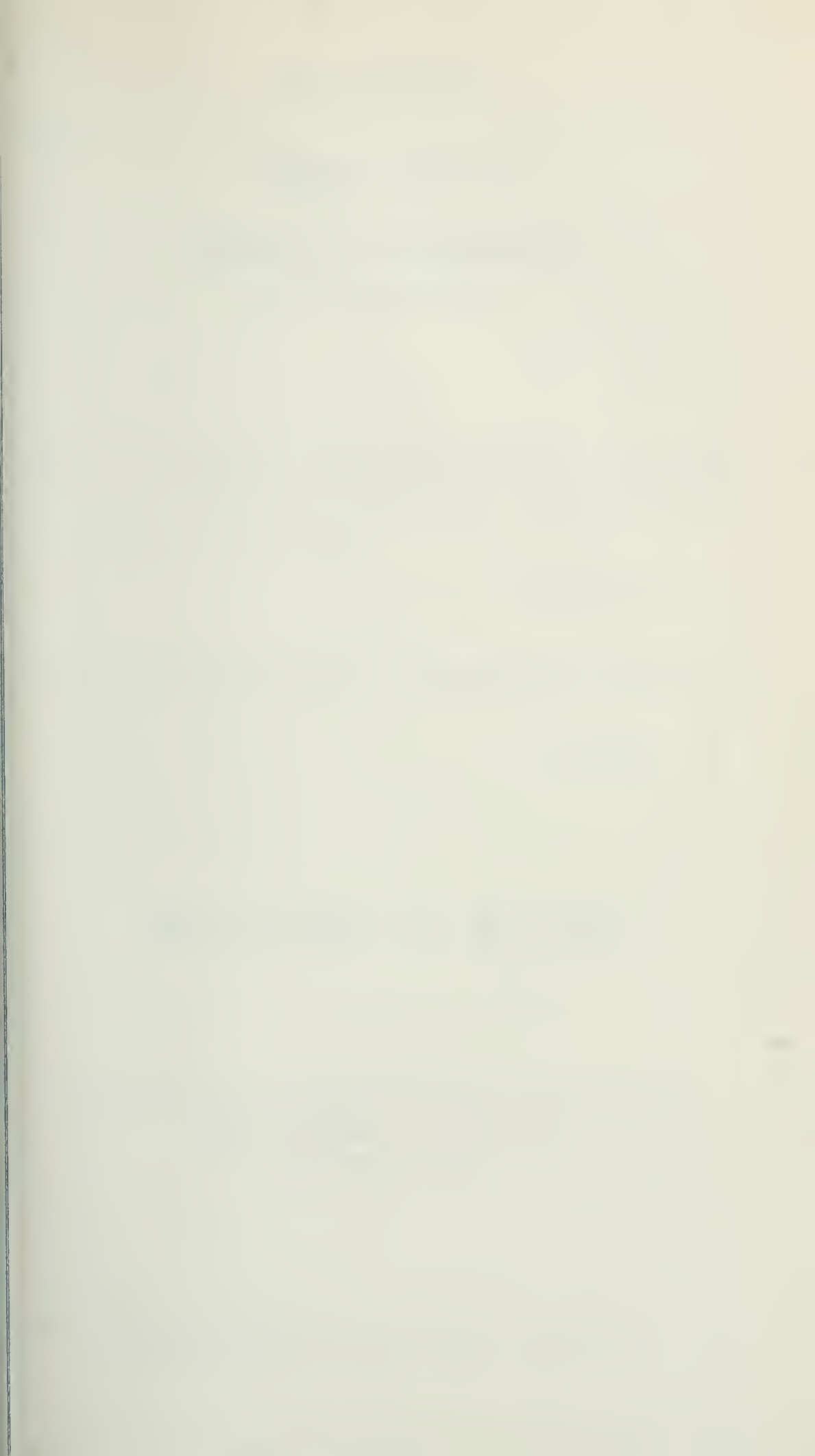
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Appeal from the United States District Court for the  
Eastern District of Washington,  
Northern Division.

FILED

DEC 24 1951







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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS  
OF RECORD

BROWN & BROWN,  
902 Paulsen Building,  
Spokane, Washington,

Attorneys for Defendant and Appellant.

WITHERSPOON, WITHERSPOON & KELLEY,  
1114 Old National Bank Bldg.,  
Spokane, Washington,

Attorneys for Plaintiff and Appellee.



In the District Court of the United States for  
the Eastern District of Washington, Northern  
Division

No. 906

ANCHOR CASUALTY COMPANY, a Corpora-  
tion,

Plaintiff,

vs.

INLAND MOTOR FREIGHT, INC., a Corpora-  
tion, and PACIFIC HIGHWAY TRANS-  
PORT, INC., a Corporation,

Defendants.

### COMPLAINT

Plaintiff complains of defendants and alleges:

#### I.

Plaintiff, Anchor Casualty Company, is, and at all times herein mentioned has been, a corporation organized and existing under the laws of the State of Minnesota, with its principal place of business in the City of St. Paul in the State of Minnesota; defendants, Inland Motor Freight, Inc., and Pacific Highway Transport, Inc., are, and at all times herein mentioned, have been corporations organized and existing under the laws of the State of Washington, each having its principal place of business and registered office in the City of Spokane, County of Spokane, State of Washington. The matter in controversy exceeds, exclusive of interest and costs, the sum of \$3,000.00.

## II.

That plaintiff is, and at all times herein mentioned, has been duly authorized to transact business in the State of Washington, and to issue policies of insurance therein covering liability of owners or operators of automotive equipment for bodily injury to others and damage to property of others arising out of the operation thereof; and has paid all fees due the State of Washington under existing laws.

## III.

On or about April 1, 1949, the defendants procured from plaintiff, and plaintiff issued to them, a policy of insurance insuring them for the period of one (1) year from said date against such liability arising out of the operation of automotive equipment owned or operated by them, in consideration of premiums therein agreed by said defendants to be paid to plaintiff. Said policy provided that said premiums should be paid by defendants to plaintiff monthly in amounts based upon their gross receipts accruing each month from the operation or use of automotive equipment in their business operations, said monthly payments to be at the rate of 90c premium for each \$100.00 of gross receipts of the defendant, Inland Motor Freight, and \$1.35 for each \$100.00 of gross receipts of Pacific Highway Transport, Inc.; gross receipts being in said policy defined to mean the total gross revenue before deductions of any charges or expenses, and regardless of whether such revenue was

collected or not, accruing from the operation or use of automotive equipment in the business operations of the defendants. Said policy further provided that it might be cancelled by the insured, the said defendants, in which case the earned premiums should be computed in accordance with the customary short rate table and procedure.

#### IV.

The defendants cancelled said policy when the same had been in force a period of sixty-one (61) days; that the gross receipts of the defendant, Inland Motor Freight, Inc., during said 61 days was the sum of \$456,650.61, upon which the aggregate earned premium at the rate so specified amounted to \$4,109.85, and upon which the short rate penalty due to said cancellation amounted to \$2,529.91; that the gross receipts of Pacific Highway Transport, Inc., during said 61 days was \$311,848.46, upon which the earned premium at the rate specified in said policy amounted to \$4,209.95, and upon which the short rate penalty for cancellation amounted to \$2,591.53; the total of said premiums and short rate penalty being in the amount of \$13,441.24 earned and becoming due the plaintiff under said policy. Defendants have paid plaintiff the sum of \$8,319.84 to apply upon said premiums, leaving a balance which is due and owing plaintiff of \$5,121.40, together with interest thereon at the rate of six per cent (6%) per annum from June 1, 1949.

Wherefore, plaintiff demands judgment against the defendants for the sum of \$5,121.40, together



with interest thereon at the rate of six per cent (6%) per annum from June 1, 1949, to the date of judgment herein.

WITHERSPOON, WITHER-  
SPOON & KELLEY,

/s/ WILLIAM V. KELLEY,  
Attorneys for Plaintiff.

[Endorsed]: Filed October 12, 1950.

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[Title of District Court and Cause.]

VOLUNTARY BILL OF PARTICULARS

Comes now plaintiff above named and furnishes, by way of a voluntary bill of particulars, the information asked for in defendants' motion for more definite statement, by attaching as Exhibit "A" a true and correct copy of the policy of insurance referred to in paragraph III of plaintiff's complaint.

Dated this 8th day of January, 1951.

WITHERSPOON, WITHER-  
SPOON & KELLEY,

/s/ WM. V. KELLEY,  
Attorneys for Plaintiff.

## Declarations

- Item 1. NAME OF INSURED. INLAND MOTOR FREIGHT, INC., AND PACIFIC HIGHWAY  
TRANSPORT, INC.  
Address 1001 S. E. Water, Portland, Oregon  
(Number, Street, Town, County, State)  
The automobile will be principally garaged in the above town, county and state, unless otherwise stated herein:  
The named insured is CORPORATION  
(Individual, Corporation or Co-partnership; if latter, give names of partners)  
Occupation of the named insured is FREIGHT LINE  
(If married woman, give husband's occupation or business)
- Item 2. POLICY PERIOD: From APRIL 1 1949 to APRIL 1 1950  
twelve and one minute o'clock A. M., standard time at the address of the named insured as stated herein.
- Item 3. The insurance afforded is only with respect to such and so many of the following coverages as are indicated by specific premium charge or charges. The limit of the company's liability against each such coverage shall be as stated herein, subject to all the terms of this policy having reference thereto.

COVERAGES	LIMITS OF LIABILITY	PREMIUMS
A. BODILY INJURY LIABILITY.	\$ <u>25,000</u> each person. \$ <u>100,000</u> each accident.	\$ SEE
B. PROPERTY DAMAGE LIABILITY.	\$ <u>25,000</u> each accident.	\$ END. #1
C. MEDICAL PAYMENTS	\$ each person.	\$
D. COMPREHENSIVE.		\$
E. COLLISION OR UPSET.	Actual Cash Value less \$ deductible.	\$
E-1. CONVERTIBLE COLLISION OR UPSET.	Actual Cash Value. Additional Payment \$	\$
F. FIRE, LIGHTNING AND TRANSPORTATION.		\$
G. THEFT.		\$
H. WINDSTORM, EARTHQUAKE, EXPLOSION, HAIL OR WATER.		\$
I. COMBINED ADDITIONAL COVERAGE.		\$
J. TOWING AND LABOR COST.	\$10 for each disablement.	\$

DEPOSIT Total Premium \$ 4,500.00

- Item 4. Description of the automobile and facts respecting its purchase by the named insured:

Year of Model	Trade Name	Type of Body (Truck Load, Gal- lonage, Bus-Seating Capacity)	Motor Number and Serial Number	No. of Cyls. and Model	Factory List Price or Symbol	Actual Cost When Pur- chased Including Equipment	Purchased		
							Month	Year	New or Used
			M	Cyls.					
			S	Mdl.					

- Item 5. The purposes for which the automobile is to be used are.
- COMMERCIAL CARS - COMMERCIAL PURPOSES
- 
- PASSENGER CARS - BUSINESS PURPOSES

- (a) The term "pleasure and business" is defined as personal, pleasure, family and business use.  
(b) The term "commercial" is defined as use principally in the business occupation of the named insured as stated in item 1, including occasional use for personal, pleasure, family and other business purposes.  
(c) Use of the automobile for the purposes stated includes the loading and unloading thereof.

- Item 6. The automobile is unencum-
- 
- bered unless otherwise stated
- 
- herein:

Encumbrance	Installment Payments		Due Date and Amount of Final Installment
	Number	Amount of Each	
\$		\$	\$

Any loss under Coverages D, E, E-1, F, G, H and I is payable as interest may appear to the named insured and.....

NO EXCEPTIONS

(Name and Address)

- Item 7. (a) During the past year no insurer has cancelled any automobile insurance issued to the named insured; (b) Except with respect to bailment lease, conditional sale, mortgage or other encumbrance the named insured is the sole owner of the automobile:

Exception, if any, to (a) or (b) NO EXCEPTIONSCountersigned at PORTLAND, OREGON this 5TH day of APRIL 1949

By

Authorized Agent.





# ANCHOR CASUALTY COMPANY

(A STOCK INSURANCE COMPANY, HEREIN CALLED THE COMPANY)

DOES HEREBY AGREE with the insured, named in the declarations made a part hereof, in consideration of the payment of the premium and in reliance upon the statements in the declarations and subject to the limits of liability, exclusions, conditions and other terms of this policy:

## INSURING AGREEMENTS

- I. **COVERAGE A—BODILY INJURY LIABILITY.** To pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of bodily injury, sickness or disease, including death at any time resulting therefrom, sustained by any person, caused by accident and arising out of the ownership, maintenance or use of the automobile.
- COVERAGE B—PROPERTY DAMAGE LIABILITY.** To pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of injury to or destruction of property, including the loss of use thereof, caused by accident and arising out of the ownership, maintenance or use of the automobile.
- COVERAGE C—MEDICAL PAYMENTS.** To pay all reasonable expenses incurred within one year from the date of accident for necessary medical, surgical, ambulance, hospital, professional nursing and funeral services, to or for each person who sustains bodily injury, sickness or disease, caused by accident, while in or upon, entering or alighting from the automobile if the automobile is being used by the named insured or with his permission.
- COVERAGE D—COMPREHENSIVE LOSS OF OR DAMAGE TO THE AUTOMOBILE, EXCEPT BY COLLISION OR UPSET.** To pay for any direct and accidental loss of or damage to the automobile, hereinafter called loss, except loss caused by collision of the automobile with another object or by upset of the automobile or by collision of the automobile with a vehicle to which it is attached. Breakage of glass and loss caused by missiles, falling objects, fire, theft, explosion, earthquake, windstorm, hail, water, flood, vandalism, riot or civil commotion shall not be deemed loss caused by collision or upset.
- COVERAGE E—COLLISION OR UPSET.** To pay for direct and accidental loss of or damage to the automobile, hereinafter called loss, caused by collision of the automobile with another object or by upset of the automobile, but only for the amount of each such loss in excess of the deductible amount, if any, stated in the declarations as applicable hereto.
- COVERAGE E-1—CONVERTIBLE COLLISION OR UPSET.** To pay for direct and accidental loss of or damage to the automobile, hereinafter called loss, caused by collision of the automobile with another object or by upset of the automobile. Upon the occurrence of the first loss for which payment is sought hereunder the insured shall pay to the company the additional payment stated in the declarations. Loss caused by collision or upset occurring prior to the first loss for which payment is sought hereunder is not covered.
- COVERAGE F—FIRE, LIGHTNING AND TRANSPORTATION.** To pay for direct and accidental loss of or damage to the automobile, hereinafter called loss, caused (a) by fire or lightning, (b) by smoke or smudge due to a sudden, unusual and faulty operation of any fixed heating equipment serving the premises in which the automobile is located, or (c) by the stranding, sinking, burning, collision or derailment of any conveyance in or upon which the automobile is being transported on land or on water.
- COVERAGE G—THEFT.** To pay for loss of or damage to the automobile, hereinafter called loss, caused by theft, larceny, robbery or pilferage.
- COVERAGE H—WINDSTORM, EARTHQUAKE, EXPLOSION, HAIL OR WATER.** To pay for direct and accidental loss of or damage to the automobile, hereinafter called loss, caused by windstorm, hail, earthquake, explosion, external discharge or leakage of water except loss resulting from rain, snow or sleet.
- COVERAGE I—COMBINED ADDITIONAL COVERAGE.** To pay for direct and accidental loss of or damage to the automobile, hereinafter called loss, caused by windstorm, hail, earthquake, explosion, riot or civil commotion, or the forced landing or falling of any aircraft or of its parts or equipment, flood or rising waters, external discharge or leakage of water except loss resulting from rain, snow or sleet.
- COVERAGE J—TOWING AND LABOR COSTS.** To pay for towing and labor costs necessitated by the disablement of the automobile provided the labor is performed at the place of disablement.
- II. **DEFENSE, SETTLEMENT, SUPPLEMENTARY PAYMENTS.** As respects the insurance afforded by the other terms of this policy under coverages A and B the company shall:
  - (a) defend any suit against the insured alleging such injury, sickness, disease or destruction and seeking damages on account thereof, even if such suit is groundless, false or fraudulent; but the company may make such investigation, negotiation and settlement of any claim or suit as it deems expedient;
  - (b) pay all premiums on bonds to release attachments for an amount not in excess of the applicable limit of liability of this policy, all premiums on appeal bonds required in any such defended suit, the cost of bail bonds required of the insured in the event of accident or traffic law violation during the policy period, not to exceed the usual charges of surety companies nor \$100 per bail bond, but without any obligation to apply for or furnish any such bonds;
  - (c) pay all expenses incurred by the company, all costs taxed against the insured in any such suit and all interest accruing after entry of judgment until the company has paid, tendered or deposited in court such part of such judgment as does not exceed the limit of the company's liability thereon;
  - (d) pay expenses incurred by the insured for such immediate medical and surgical relief to others as shall be imperative at the time of the accident, reimburse the insured for all reasonable expenses, other than loss of earnings, incurred at the company's request.

The amounts incurred under this insuring agreement, except settlements of claims and suits, are payable by the company in addition to the applicable limit of liability of this policy.
- III. **DEFINITION OF INSURED.** With respect to the insurance for bodily injury liability and for property damage liability the unqualified word "insured" includes the named insured and also includes any person while using the automobile and any person or organization legally responsible for the use thereof, provided the actual use of the automobile is by the named insured or with his permission. The insurance with respect to any person or organization other than the named insured does not apply:
  - (a) to any person or organization, or to any agent or employee thereof, operating an automobile repair shop, public garage, sales agency, service station or public parking place, with respect to any accident arising out of the operation thereof;
  - (b) to any employee with respect to injury to or sickness, disease or death of another employee of the same employer injured in the course of such employment in an accident arising out of the maintenance or use of the automobile in the business of such employer.
- IV. **AUTOMOBILE DEFINED, TRAILERS, TWO OR MORE AUTOMOBILES.**
  - (a) **Automobile.** Except where stated to the contrary, the word "automobile" means:
    - (1) **Described Automobile**—the motor vehicle or trailer described in this policy;
    - (2) **Utility Trailer**—under coverages A, B and C, a trailer not so described, if designed for use with a private passenger automobile, if not being used with another type automobile and if not a home, office, store, display or passenger trailer;
    - (3) **Temporary Substitute Automobile**—under coverages A, B and C, an automobile not owned by the named insured while temporarily used as the substitute for the described automobile while withdrawn from normal use because of its breakdown, repair, servicing, loss or destruction;
    - (4) **Newly Acquired Automobile**—an automobile, ownership of which is acquired by the named insured who is the owner of the described automobile, if the named insured notifies the company within thirty days following the date of its delivery to him, and if either it replaces an automobile described in this policy or the company insures all automobiles owned by the named insured at such delivery date; but the insurance with respect to the newly acquired automobile does not apply to any loss against which the named insured has other valid and collectible insurance. The named insured shall pay any additional premium required because of the application of the insurance to such newly acquired automobile.

The word "automobile" also includes under coverages D, E, E-1, F, G, H and I its equipment and other equipment permanently attached thereto.
  - (b) **Semitrailer.** The word "trailer" includes semitrailer.
  - (c) **Two or More Automobiles.** When two or more automobiles are insured hereunder, the terms of this policy shall apply separately to each, but a motor vehicle and a trailer or trailers attached thereto shall be held to be one automobile as respects limits of liability under coverages A and B and separate automobiles as respects limits of liability, including any deductible provisions, under coverages D, E, E-1, F, G, H, I and J.
- V. **USE OF OTHER AUTOMOBILES.** If the named insured is an individual who owns the automobile classified as "pleasure and business" or husband and wife either or both of whom own said automobile, such insurance as is afforded by this policy for bodily injury liability, for property damage liability and for medical payments with respect to said automobile applies with respect to any other automobile, subject to the following provisions:
  - (a) With respect to the insurance for bodily injury liability and for property damage liability the unqualified word "insured" includes (1) such named insured, (2) the spouse of such individual if a resident of the same household and (3) any other person or organization legally responsible for the use by such named insured or spouse of an automobile not owned or hired by such other person or organization. Insuring Agreement III, Definition of Insured, does not apply to this insurance.
  - (b) This insuring agreement does not apply:
    - (1) to any automobile owned by, hired as part of a frequent use of hired automobiles by, or furnished for regular use to the named insured or a member of his household other than a private chauffeur or domestic servant of the named insured or spouse;
    - (2) to any automobile while used in the business or occupation of the named insured or spouse except a private passenger automobile operated or occupied by such named insured, spouse, chauffeur or servant;
    - (3) to any accident arising out of the operation of an automobile repair shop, public garage, sales agency, service station or public parking place;
    - (4) under coverage C, unless the injury results from the operation of such other automobile by such named insured or spouse or on behalf of either by such chauffeur or servant, or from the occupancy of said automobile by such named insured or spouse.
- VI. **LOSS OF USE BY THEFT—RENTAL REIMBURSEMENT.** The company, following a theft covered under this policy, shall reimburse the named insured for expense not exceeding \$5 for any one day nor totaling more than \$150 or the actual cash value of the automobile at time of theft, whichever is less, incurred for the rental of a substitute automobile, including taxicabs. Reimbursement is limited to such expense incurred during the period commencing seventy-two hours after such theft has been reported to the company and the police and terminating, regardless of expiration of the policy period, on the date the whereabouts of the automobile becomes known to the named insured or the company or on such earlier date as the company makes or tenders settlement for such theft. Such reimbursement shall be made only if the stolen automobile was a private passenger automobile not used as a public or livery conveyance and not owned and held for sale by an automobile dealer.
- VII. **GENERAL AVERAGE AND SALVAGE CHARGES.** The company, with respect to such transportation insurance as is afforded by this policy, shall pay any general average and salvage charges for which the named insured becomes legally liable.
- VIII. **POLICY PERIOD, TERRITORY, PURPOSES OF USE.** This policy applies only to accidents which occur and to direct and accidental losses to the automobile which are sustained during the policy period while the automobile is used, maintained and used for the purposes stated as applicable thereto in the declaration and is within the United States of America, its territories or possessions, Canada, or Newfoundland (or being transported between ports thereof), or that part of Mexico which is not more than seventy-five (75) miles from the southern boundary line of the United States of America, provided the insured's place of residence and the principal garaging of the automobile is in the United States of America and that any use of the automobile in Mexico is for occasional trips of not over ten days duration.





This policy does not apply:

## EXCLUSIONS.

- (a) under any of the coverages, while the automobile is used as a public or livery conveyance, unless such use is specifically declared and described in this policy and premium charged therefor;
- (b) under coverages A, B and C, to liability assumed by the insured under any contract or agreement;
- (c) under coverages A and B, while the automobile is used for the towing of any trailer owned or hired by the insured and not covered by like insurance in the company; or while any trailer covered by this policy is used with any automobile owned or hired by the insured and not covered by like insurance in the company;
- (d) under coverages A and C, to bodily injury to or sickness, disease or death of any employee of the insured while engaged in the employment, other than domestic, of the insured or in domestic employment if benefits therefor are either payable or required to be provided under any workmen's compensation law;
- (e) under coverage A, to any obligation for which the insured or any company as his insurer may be held liable under any workmen's compensation law;
- (f) under coverage B, to injury to or destruction of property owned by, rented to, in charge of or transported by the insured;
- (g) under coverage C, to bodily injury to or sickness, disease or death of any person if benefits therefor are payable under any workmen's compensation law;
- (h) under coverages D, E, E-1, F, G, H, I and J, while the automobile is subject to any bailment lease, conditional sale, mortgage or other encumbrance not specifically declared and described in this policy;
- (i) under coverages D, E, E-1, G, H, I and J, to loss due to war, whether or not declared, invasion, civil war, insurrection, rebellion or revolution or to confiscation by duly constituted governmental or civil authority;
- (j) under coverages D, E, E-1, G, H, I and J, to any damage to the automobile which is due and confined to wear and tear, freezing, mechanical or electrical breakdown or failure, unless such damage is the result of other loss covered by this policy;
- (k) under coverages D, E, E-1, G, H, I and J, to robes, wearing apparel or personal effects;
- (l) under coverages D, E, E-1, G, H, I and J, to tires unless damaged by fire or stolen or unless such loss be coincident with other loss covered by this policy;
- (m) under coverages D and G, to loss due to conversion, embezzlement or secretion by any person in lawful possession of the automobile under a bailment lease, conditional sale, mortgage or other encumbrance;
- (n) under coverages E and E-1, to breakage of glass if insurance with respect to such breakage is otherwise afforded.

## CONDITIONS.

The conditions, except conditions 1 to 19 inclusive, apply to all coverages. Conditions 1 to 19 inclusive apply only to the coverage or coverages noted thereunder.

1. **Notice of Accident.** When an accident occurs written notice shall be given by or on behalf of the insured to the company or any of its authorized agents as soon as practicable. Such notice shall contain particulars sufficient to identify the insured and also reasonably obtainable information respecting the time, place and circumstances of the accident, the names and addresses of the injured and of available witnesses.  
Coverages A, B and C
2. **Notice of Claim or Suit.** If claim is made or suit is brought against the insured, the insured shall immediately forward to the company every demand, notice, summons or other process received by him or his representative.  
Coverages A and B
3. **Limits of Liability.** The limit of bodily injury liability stated in the declarations as applicable to "each person" is the limit of the company's liability for all damages, including damages for care and loss of services, arising out of bodily injury, sickness or disease, including death at any time resulting therefrom, sustained by one person in any one accident; the limit of such liability stated in the declarations as applicable to "each accident" is, subject to the above provision respecting each person, the total limit of the company's liability for all damages, including damages for care and loss of services, arising out of bodily injury, sickness or disease, including death at any time resulting therefrom, sustained by two or more persons in any one accident.  
Coverage A
4. **Limit of Liability.** The limit of liability for medical payments stated in the declarations as applicable to "each person" is the limit of the company's liability for all expenses incurred by or on behalf of each person who sustains bodily injury, sickness or disease, including death resulting therefrom, in any one accident.  
Coverage C
5. **Limits of Liability.** The inclusion herein of more than one insured shall not operate to increase the limits of the company's liability.  
Coverages A, B and C
6. **Action Against Company.** No action shall lie against the company unless, as a condition precedent thereto, the insured shall have fully complied with all the terms of this policy, nor until the amount of the insured's obligation to pay shall have been finally determined either by judgment against the insured after actual trial or by written agreement of the insured, the claimant and the company.  
Coverages A and B
7. **Action Against Company.** No action shall lie against the company unless, as a condition precedent thereto, there shall have been full compliance with all the terms of this policy, nor until thirty days after the required proofs of claim have been filed with the company.  
Coverage C
8. **Financial Responsibility Laws.** Such insurance as is afforded by this policy for bodily injury liability or property damage liability shall comply with the provisions of the motor vehicle financial responsibility law of any state or province which shall be applicable with respect to any such liability arising out of the ownership, maintenance or use of the automobile during the policy period, to the extent of the coverage and limits of liability required by such law, but in no event in excess of the limits of liability stated in this policy. The insured agrees to reimburse the company for any payment made by the company which it would not have been obligated to make under the terms of this policy except for the agreement contained in this paragraph.  
Coverages A and B
9. **Assault and Battery.** Assault and battery shall be deemed an accident unless committed by or at the direction of the insured.  
Coverages A and B
10. **Medical Reports; Proof and Payment of Claim.** As soon as practicable the injured person or someone on his behalf shall give to the company written proof of claim, under oath if required, and shall, after each request from the company, execute authorization to enable the company to obtain medical reports and copies of records. The injured person shall submit to physical examination by physicians selected by the company when and as often as the company may reasonably require.  
Coverage C

The company may pay the injured person or any person or organization rendering the services and such payment shall reduce the amount payable hereunder for such injury. Payment hereunder shall not constitute admission of liability of the insured or, except hereunder, of the company.

11. **Named Insured's Duties When Loss Occurs.** When loss occurs, the named insured shall:  
Coverages D, E, E-1, F, G, H, I and J
  - (a) protect the automobile, whether or not the loss is covered by this policy, and any further loss due to the named insured's failure to protect shall not be recoverable under this policy; reasonable expense incurred in according such protection shall be deemed incurred at the company's request;
  - (b) give notice thereof as soon as practicable to the company or any of its authorized agents and also, in the event of theft, larceny, robbery or pilferage, to the police but shall not, except at his own cost, offer or pay any reward for recovery of the automobile;
  - (c) file proof of loss with the company within sixty days after the occurrence of loss, unless such time is extended in writing by the company, in the form of a sworn statement of the named insured setting forth the interest of the named insured and of all others in the property affected, any encumbrances thereon, the actual cash value thereof at time of loss, the amount, place, time and cause of such loss, the amount of rental or other expense for which reimbursement is provided under this policy, together with original receipts therefor, and the description and amounts of all other insurance covering such property.
- Upon the company's request, the named insured shall exhibit the damaged property to the company and submit to examinations under oath by anyone designated by the company, subscribe the same and produce for the company's examination all pertinent records and sales invoices, or certified copies if originals be lost, permitting copies thereof to be made, all at such reasonable times and places as the company shall designate.
12. **Appraisal.** If the named insured and the company fail to agree as to the amount of loss, each shall, on the written demand of either, made within sixty days after receipt of proof of loss by the company, select a competent and disinterested appraiser, and the appraisal shall be made at a reasonable time and place. The appraisers shall first select a competent and disinterested umpire, and failing for fifteen days to agree upon such umpire, then, on the request of the named insured or the company, such umpire shall then appraise the loss, stating separately the actual cash value at the time of loss and the amount of loss, and failing to agree shall submit their differences to the umpire. An award in writing of any two shall determine the amount of loss. The named insured and the company shall each pay his or its chosen appraiser and shall bear equally the other expenses of the appraisal and umpire.  
Coverages D, E, E-1, F, G, H, I and J
13. **Limit of Liability; Settlement Options; No Abandonment.** The limit of the company's liability for loss shall not exceed the actual cash value of the automobile, or if the loss is of a part thereof the actual cash value of such part, at time of loss nor what it would then cost to repair or replace the automobile or such part thereof with other of like kind and quality, with deduction for depreciation, nor the applicable limit of liability stated in the declarations.  
Coverages D, E, E-1, F, G, H and I

The company may pay for the loss in money or may repair or replace the automobile or such part thereof, as aforesaid, or may return any stolen property with payment for any resultant damage thereto at any time before the loss is paid or the property is so replaced, or may take all or such part of the automobile at the agreed or appraised value but there shall be no abandonment to the company.



14. **Payment for Loss; Action Against Company.** No action shall lie against the company unless, as a condition precedent thereto, the named insured shall have fully complied with all the terms of this policy nor until thirty days after proof of loss is filed and the amount of loss is determined as provided in this policy.
15. **No Benefit to Bailee.** The insurance afforded by this policy shall not enure directly or indirectly to the benefit of any carrier or bailee. Coverages D, E, E-1, F, G, H, I and J.
16. **Assistance and Cooperation of the Insured.** The insured shall cooperate with the company and, upon the company's request, shall attend hearings and trials and shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits. The insured shall do nothing after loss to prejudice such rights. Coverages A, B, D, E, E-1, F, G, H, I and J.
17. **Subrogation.** In the event of any payment under this policy, the company shall be subrogated to all the insured's rights of recovery therefor against any person or organization and the insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The insured shall do nothing after loss to prejudice such rights. Coverages A, B, D, E, E-1, F, G, H, I and J.
18. **Other Insurance.** If the insured has other insurance against a loss covered by this policy the company shall not be liable under this policy for a greater proportion of such loss than the applicable limit of liability stated in the declarations bears to the total applicable limit of liability of all valid and collectible insurance against such loss; provided, however, the insurance with respect to substitute automobiles under Insuring Agreement IV or other automobiles under Insuring Agreement V shall be excess insurance over any other valid and collectible insurance available to the insured, either as an insured under a policy applicable with respect to said automobiles or otherwise.
19. **Other Insurance.** The insurance afforded with respect to other automobiles under insuring Agreement V shall be excess insurance over any other valid and collectible medical payments insurance applicable thereto. Coverage C.
20. **Changes.** Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this policy or estop the company from asserting any right under the terms of this policy; nor shall the terms of this policy be waived or changed, except by endorsement issued to form a part of this policy, signed by the President, a Vice-President, Secretary or Assistant Secretary of the company.
21. **Assignment.** Assignment of interest under this policy shall not bind the company until its consent is endorsed hereon; if, however, the named insured shall die or be adjudged bankrupt or insolvent within the policy period, this policy, unless canceled, shall, if written notice be given to the company within sixty days after the date of such death or adjudication, cover (1) the named insured's legal representative as the named insured, and (2) under coverages A and B, subject otherwise to the provisions of Insuring Agreement III, any person having proper temporary custody of the automobile, as an insured, and under coverage C while the automobile is used by such person, until the appointment and qualification of such legal representative but in no event for a period of more than sixty days after the date of such death or adjudication.
22. **Cancellation.** This policy may be canceled by the named insured by surrender thereof or by mailing to the company written notice stating when thereafter such cancellation shall be effective. This policy may be canceled by the company by mailing to the named insured at the address shown in this policy written notice stating when not less than five days thereafter such cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice and the effective date and hour of cancellation stated in the notice shall become the end of the policy period. Delivery of such written notice either by the named insured or by the company shall be equivalent to mailing. If the named insured cancels, earned premiums shall be computed in accordance with the customary short rate table and procedure. If the company cancels, earned premiums shall be computed pro rata. Premium adjustment may be made at the time cancellation is effected and, if not then made, shall be made as soon as practicable after cancellation becomes effective. The company's check or the check of its representative mailed or delivered as aforesaid shall be a sufficient tender of any refund of premium due to the named insured.
23. **Terms of Policy Conformed to Statute.** Terms of this policy which are in conflict with the statutes of the State wherein this policy is issued are hereby amended to conform to such statutes.
24. **Declarations.** By acceptance of this policy the named insured agrees that the statements in the declarations are his agreements and representations, that this policy is issued in reliance upon the truth of such representations and that this policy embodies all agreements existing between himself and the company or any of its agents relating to this insurance.
- IN WITNESS WHEREOF, The ANCHOR CASUALTY COMPANY has caused this policy to be signed by its president and secretary or assistant secretary at Saint Paul, Minnesota, and countersigned on the declarations page by a duly authorized agent of the company.

*G. Blomholm*  
SECRETARY.

*Henry*  
PRESIDENT

Short Rate Cancellation Table			
For Term of One Year			
Cancellation of policies issued for a term exceeding one year shall be made on the basis of the following table:			
(a) When the policy has run for less than a year, the earned premium shall be computed short rate of the first year's premium;			
(b) When the policy has run over one year, the earned premium shall be the first year's premium plus pro rata of the annual premium for the second year.			
Days to Force	Per Cent to be Charged or Refund	Days in Force	Per Cent to be Charged or Refund
1	5	151-156	53
2	6	157-160	54
3	7	161-164	55
4	8	165-167	56
5	9	168-171	57
6	10	172-175	58
7	11	176-178	59
8	12	179-182	60
9	13	183-187	61
10	14	188-191	62
11	15	192-196	63
12	16	197-200	64
13	17	201-205	65
14	18	206-209	66
15	19	210-214 (7 mos.)	67
16	20	215-218	68
17	21	219-223	69
18	22	224-228	70
19	23	229-232	71
20	24	233-237	72
21	25	238-241	73
22	26	242-246 (8 mos.)	74
23	27	247-250	75
24	28	251-255	76
25	29	256-260	77
26	30	261-264	78
27	31	265-269	79
28	32	270-273 (9 mos.)	80
29	33	274-278	81
30	34	279-282	82
31	35	283-287	83
32	36	288-291	84
33	37	292-296	85
34	38	297-301	86
35	39	302-305 (10 mos.)	87
36	40	306-310	88
37	41	311-314	89
38	42	315-319	90
39	43	320-323	91
40	44	324-328	92
41	45	329-332	93
42	46	333-337 (11 mos.)	94
43	47	338-342	95
44	48	343-346	96
45	49	347-351	97
46	50	352-355	98
47	51	356-360	99
48	52	361-365 (12 mos.)	100

ANCHOR

CASUALTY COMPANY

A STOCK COMPANY

ST. PAUL, MINNESOTA

Automobile Combination Policy

AUTOMOBILE

No. AS 79294

Issued to

INLAND MOTOR FREIGHT, INC.

PORTLAND, OREGON

Expires APRIL 1, 1950

At twelve and one minute o'clock A. M.

Form 37D 1-48





ENDORSEMENT No. 1

Form B. M. 31  
(Copy)

Form Approved Budget  
Bureau No. 60-R093-42

Endorsement for Motor Carrier Policies of Insurance for Bodily Injury Liability, and Property Damage Liability, Under Section 215, Interstate Commerce Act

The policy to which this endorsement is attached is an automobile bodily injury liability and property damage liability policy, and is hereby amended to assure compliance by the insured as a motor carrier of passengers or property, with section 215 of the Interstate Commerce Act, and the pertinent rules and regulations of the Interstate Commerce Commission.

In consideration of the premium stated in the policy to which this endorsement is attached, the Company hereby agrees to pay any final judgment recovered against the insured for bodily injury to or the death of any person or loss of or damage to property of others (excluding injury to or death of the insured's employees while engaged in the course of their employment, and loss of or damage to property of the insured, and property transported by the insured, designated as cargo), resulting from the negligent operation, maintenance, or use of motor vehicles under certificate of public convenience and necessity or permit issued to the insured by the Interstate Commerce Commission, or otherwise under Part II of the Interstate Com-

merce Act, within the limits of liability herein-after provided, regardless of whether such motor vehicles are specifically described in the policy or not. It is understood and agreed that upon failure of the Company to pay any such final judgment recovered against the insured, the judgment creditor may maintain an action in any court of competent jurisdiction against the Company to compel such payment. The bankruptcy or insolvency of the insured shall not relieve the Company of any of its obligations hereunder. The liability of the Company extends to such losses, damages, injuries, or deaths whether occurring on the route or in the territory authorized to be served by the insured or elsewhere, except as follows:

(Name as exceptions only States in which the insured's operations are covered by other insurance): No Exceptions.

The liability of the Company on each motor vehicle for the following limits shall be a continuing one notwithstanding any recovery hereunder:



Schedule of Limits

Motor Carriers—Bodily Injury Liability—  
Property Damage Liability

(1)	(2)	(3)	(4)
Kind of equipment	Limit for bodily injuries to or death of one person	Limit for bodily injuries to or death of all per- sons injured or killed in any one accident (subject to a maximum of \$5,000 for bodily injuries to or death of one person)	Limit for loss or damage in any one accident to property of others (excluding cargo)
Passenger Equipment (seating capacity)			
Seven passengers or less.....	\$5,000	\$15,000	\$1,000
8 to 12 passengers, inclusive.....	5,000	20,000	1,000
13 to 20 passengers, inclusive.....	5,000	30,000	1,000
21 to 30 passengers, inclusive.....	5,000	40,000	1,000
31 passengers or more.....	5,000	50,000	1,000
Freight Equipment			
All motor vehicles used in the transportation of property.....	\$5,000	\$10,000	\$1,000

Nothing contained in the policy or any other endorsement thereon, nor the violation of any of the provisions of the policy or of any endorsement thereon by the insured, shall relieve the Company from liability hereunder or from the payment of any such final judgment.

The insured agrees to reimburse the Company for any payment made by the Company on account of any accident, claim, or suit involving a breach of the terms of the policy, and for any payment that the Company would not have been obligated to make under the provisions of the policy, except for the agreement contained in this endorsement.

This endorsement may not be canceled without

cancelation of the policy to which it is attached. Such cancelation may be effected by the Company or the insured giving thirty (30) days' notice in writing to the Interstate Commerce Commission at its office in Washington, D. C., said thirty (30) days' notice to commence to run from the date notice is actually received at the office of said Commission.

Attached to and forming part of policy No. AS 793494, issued by the Anchor Casualty Company (herein called Company) of St. Paul, Minnesota to Pacific Highway Transport, Inc., of Seattle, Wash.

Dated at Seattle, Wash., this 5th day of April, 1949.

Countersigned by:

.....,

Authorized Company  
Representative.

W.C. 2057A F. 176

### Endorsement No. 2

[Endorsement No. 2 is identical to the foregoing Endorsement No. 1, excepting that it is attached to Policy No. 793494, issued to Inland Motor Freight, Inc., of Spokane, Washington.]

Endorsement No. 3

(Copy)

Oregon Public Utilities Commissioner

Endorsement for Motor Carrier Policies of Insurance for Bodily Injury Liability and Property Damage Liability—Automatic Coverage

The policy to which this endorsement is attached is an automobile bodily injury liability and property damage liability policy, and is hereby amended to assure compliance by the named insured, as a motor carrier of passengers or property with appropriate provisions of the Motor Transportation Act of Oregon, as amended, and the pertinent rules and regulations of the Commissioner of Public Utilities of Oregon, promulgated in accordance with the provisions of the Motor Transportation Act of Oregon.

In consideration of the premium stated in the policy to which this endorsement is attached, or becomes a part, when duly countersigned, the company hereby agrees to pay any final judgment recovered against the named insured for bodily injury to or the death of any persons or loss of or damage to property of others (excluding injury to or death of the named insured's employees while engaged in the course of their employment, and loss of or damage to property owned or operated by or in the care, custody or control of the named insured, and property transported by the named insured, designated as cargo, and to any obligation

for which the named insured may be held liable under any Workmen's Compensation Law), resulting from the negligent operation, maintenance, ownership, or use of motor vehicles under permit issued to the named insured by the Commissioner of Public Utilities of Oregon, or otherwise under the Oregon Motor Transportation Act, within the limits of liability hereinafter provided, regardless of whether such motor vehicles are specifically described in the policy or not. It is understood and agreed that upon failure of the company to pay any such final judgment recovered against the named insured, the judgment creditor may maintain an action in any court of competent jurisdiction against the company to compel such payment. The bankruptcy or insolvency of the named insured shall not relieve the company of any of its obligations hereunder. The liability of the company extends to such losses, damages, injuries or deaths whether occurring on the route or in the territory authorized to be served by the named insured or elsewhere, within the State of Oregon, but as respects this endorsement only while operating under the provisions of the Motor Transportation Act of Oregon.

The liability of the company on each motor vehicle for the following limits shall be a continuing one notwithstanding any recovery hereunder, in the following minimum amounts:



Type of Motor Vehicle	Bodily Injury Limit for Each Person	Liability Limit for Each Accident	Property Damage Liability Limit for Each Accident
Each motor vehicle authorized for use in the transportation of property....	\$5,000	\$10,000	\$5,000
Each motor vehicle authorized for use in the transportation of persons, having passenger seating capacities as follows:			
12 passengers or less.....	5,000	10,000	5,000
13 to 20 passengers.....	5,000	15,000	5,000
20 passengers or more.....	5,000	20,000	5,000

Nothing contained in the policy or any endorsements thereon, nor the violation of any of the provisions of the policy or of any endorsement thereon by the named insured, shall relieve the company from liability hereunder or from the payment of any such final judgment, but as respects any equipment of the named insured while being operated by others under an interchange of equipment agreement or requirement, the insurance afforded by this policy shall be excess over any other valid and collectible insurance available to the named insured.

In consideration of the attachment of this endorsement, it is agreed that any provision in the policy to which this endorsement is attached extending the benefits of this insurance to any person, firm or corporation other than the insured named therein is hereby declared null and void and in lieu thereof it is agreed that the unqualified words "named insured" wherever used in this endorsement include the named insured, his or its employees while acting within the scope of such employment and also any partner, executive officer, director or stockholder thereof while acting within the scope of his duties as such.

The named insured agrees to reimburse the company for any payment made by the company on account of any accident, claim, or suit involving a breach of the terms of the policy, and for any payment that the company would not have been obligated to make under the provisions of the policy, except for the agreement contained in this endorsement.

Cancellation of this endorsement or of the policy to which it is attached may be effected by the company or the named insured giving not less than 15 days' notice in writing to the Commissioner of Public Utilities of Oregon at his office in Salem, Oregon, said notice to commence to run from the date notice is actually received at the office of said Commissioner.

Attached to and forming part of Policy No. AS 793494 issued by the Anchor Casualty Company (herein called company) of St. Paul, Minnesota, to Pacific Highway Transport, Inc., and Inland Motor Freight, et al., of Portland Oregon.

Dated at Portland, Oregon, this 5th day of April, 1949.

Countersigned by.....,

Authorized Company

Representative.

Form No. MP-943.1

Endorsement No. 4

Z-44

(Copy)

Standard Form of Endorsement Prescribed by the  
Department of Transportation of Washington

To Be Attached to and Made a Part of All Policies  
Insuring Motor Freight Carriers Subject to  
Regulation by the Department of Transporta-  
tion of Washington

(Form MV 1)

(Supersedes all endorsements heretofore required  
by said Department)

The policy to which this endorsement is attached is an Automobile Bodily Injury Liability and Property Damage Liability policy, and is hereby amended to assure compliance by the insured, as a motor carrier of property with appropriate provisions of law (Chapter 184, Laws of 1935 and acts amendatory thereof and supplemental thereto); and with the pertinent rules, orders and regulations of the Department of Transportation of Washington.

In consideration of the premium provided for in the policy of which this endorsement is made a part the Company agrees that within the classes of coverage provided by the policy it will pay any final judgment rendered against the insured for bodily injuries to or death of any person or persons other than the named insured, or damage to or destruction of property, or both, arising out of the ownership, maintenance or use of any vehicle



operated under authority of the aforesaid statutes, although such vehicle may not be specifically described in the policy; that the judgment creditor may maintain an action in any court of competent jurisdiction to compel such payment; that the right of any person, firm or corporation to recover under the policy shall not be affected by any act, omission, or misrepresentation of the insured or his employees with regard to any warranty, condition, declaration, or provision of the policy; and that the policy shall remain in full force and effect notwithstanding such act, omission or misrepresentation or the violation of any warranty, condition, declaration or provision of the policy by the insured or his employees: Provided, however, That this endorsement shall not be construed to impose any obligation on the Company for which it would not be liable independently hereof with respect to (1) bodily injuries to or death of employees of the named insured arising out of or in the course of their employment, (2) bodily injuries to or death of any person occurring while such person is riding in or upon or entering or alighting from any vehicle covered by the policy, (3) loss of or damage to property owned by, rented to, in charge of, or transported by the insured, or (4) any loss arising out of any operations of the insured except operations authorized or for which authorization is required under the aforesaid statutes. The insured agrees to reimburse the Company for any payment made by the Company on account of any accident, claim, or suit involving a breach of the terms of



the policy, and for any payment that the Company would not have been obligated to make under the provisions of the policy, except for the agreement contained in this endorsement.

The Company further agrees that such insurance as is afforded by the policy and this endorsement against liability for injuries to or death of persons and damage to or destruction of property shall not be cancelled, rescinded, or suspended, nor shall the cancellation, rescission, or suspension of the policy or of this endorsement take effect, nor shall the policy or this endorsement become void for any reason whatsoever, except by the expiration of the term for which it is written, until the Company shall have first given fifteen days' notice in writing to the Department of Transportation of Washington at its office, Insurance Building, Olympia, Washington, said fifteen days' notice to commence from the time notice is actually received by the Department.

The Company further agrees that if the policy shall be cancelled or suspended or otherwise terminated, and shall thereafter be reinstated, notice in writing of such reinstatement shall immediately be given by the Company to the Department of Transportation at its said office.

The Company further agrees that this endorsement shall prevail over any conflicting provision in the policy or in any other endorsement now or hereafter attached thereto or made a part thereof: Provided, however, That this endorsement shall be of no effect with respect to any liability in excess

of \$5,000.00 for bodily injuries to or death of any one person and \$10,000.00 for bodily injuries to or death of two or more persons in any one accident, and \$5,000.00 for damage to or destruction of property of one or more than one claimant in any one accident.

Nothing in this endorsement shall be construed to limit or restrict any coverage otherwise provided by the policy of which this endorsement is made a part.

When countersigned by an authorized representative of the Company this endorsement becomes a part of Policy No. AS 793494 issued by Anchor Casualty Company (herein called Company) of St. Paul, Minnesota, to Inland Motor Freight, Inc., effective April 1, 1949, at 12:01 a.m., standard time at the address of the insured as stated in said policy.

Countersigned at Seattle, Wash., this 5th day of April, 1949.

By .....  
Authorized Company  
Representative.

#### Endorsement No. 5

[Endorsement No. 5, is identical to the foregoing Endorsement No. 4, excepting that it is attached to Policy No. AS 973494 issued to Pacific Highway Transport, Inc.]

Endorsement No. 6

(Copy)

Freight Carrying Vehicles Only.

Auto Transportation Companies

Policy Endorsement for Motor Propelled Vehicles  
Transporting Property, and to Cover Public  
Liability and Property Damage Only

The policy or bond to which this endorsement is attached is written in pursuance of and is to be construed in accordance with Title 59, Chapter 8, Idaho Code Annotated, and all acts amendatory thereof or supplemental thereto, and the Rules and Regulations of the Public Utilities Commission of Idaho adopted thereunder. In consideration of the premium stated in the policy or bond to which this endorsement is attached, the insurer hereby waives the description of the motor propelled vehicle or motor propelled vehicles insured hereunder, and agrees to make compensation within the limits set out in this endorsement.

On each motor propelled vehicle used for the transportation of property:

Not to exceed \$5,000 for any recovery for personal injury to one person.

Not to exceed \$10,000 for any recovery for personal injury to all persons as a result of one accident.

Not to exceed \$5,000 for damage to the prop-

erty of any or all persons other than the insured as the result of any one accident.

For the purpose of this endorsement the term "motor propelled vehicle" or "motor propelled vehicles" shall be construed to include said motor propelled vehicles, trailers and other equipment.

All conditions and provisions of the policy or bond to which this endorsement is attached and any statements or agreements contained therein or endorsed thereon in conflict with this rider are by agreement of all parties hereto held null and void insofar as they are in conflict herewith.

The policy or bond to which this endorsement is attached cannot be cancelled by the insurer, or by the insured without first giving thirty (30) days' written notice to the insured and to the Public Utilities Commission of Idaho. It is understood and agreed that the injury and/or damage covered by this policy or bond be limited to such injury and/or damage occurring while operating under the terms of a permit issued by the Public Utilities Commission of the State of Idaho.

This endorsement shall become effective on the 1st day of April, 1949, at 12:01 Standard Time, at the insured's address as set forth in the statement of the above policy.

Attached to and forming a part of Policy No. AS 793494 issued by Anchor Casualty Company to Inland Motor Freight, Inc.



Witness the execution hereof this 5th day of April, 1949, at Seattle, Washington.

.....,  
Insurer.

.....,  
Agent.

### Endorsement No. 7

In consideration of the premium at which this policy is written, it is agreed that such insurance as is afforded by this policy for Bodily Injury Liability and Property Damage Liability applies to the following provisions:

1. Application of Insurance. This insurance applies to automotive equipment owned or operated by the Insured during the policy period.

2. Premiums. The named insured shall pay to the Company at the effective date of the policy a deposit premium of \$4,500.00 (\$2,169.00 Bodily Injury and \$2,331.00 Property Damage).

The earned premium shall be computed and paid monthly by applying to the gross receipts, as hereinafter defined, the rate of \$.90 (\$.434 B. I. and \$.466 P. D.) for the Inland Motor Freight, Inc., and the rate of \$1.35 (\$.651 B. I., and \$.699 P. D.) for the Pacific Highway Transport, Inc. The deposit premium shall be applied to the earned premium for the last month of the policy period as computed above. Should said deposit premium ex-

ceed the last monthly earned premium, the Company shall immediately refund the difference to the named insured, and, should the last monthly earned premium exceed the deposit premium, the difference shall be immediately payable to the Company.

3. Gross Receipts Defined. The term "Gross Receipts" as used herein, shall mean the total gross revenue, before deduction of any charges or expense, and regardless of whether such revenue is collected or not, accruing from the operation or use of automotive equipment in the business operations of the named insured.

4. Inspection. The Company shall be permitted to inspect at all reasonable times during the policy period the named Insured's Automobiles and to examine and audit at all reasonable times during the policy period, and within one year after the expiration thereof, the named insured's records so far as such records relate to the subject matter of this insurance. The Company waives no rights and assumes no responsibility by reason of such inspection or examination or the omission thereof.

Effective Date of this Endorsement April 1, 1949.

Subject in all other respects to the limits of liability, exclusions, conditions and other terms of the policy.

Policy No. AS 793494, issued to Inland Motor Freight, Inc., et al., of Portland, Oregon.

Countersigned at Portland, Oregon, this 5th day of April, 1949.

ANCHOR CASUALTY  
COMPANY,

/s/ HENRY GUTHUNZ,  
President.

Form 10 4M 5-49

Endorsement No. 8

In consideration of the premium at which this policy is written, it is agreed that the following companies shall be considered as additional Assureds as respects the operations of the Named Insured which involves transporting commodities for, or for the account of the following named concerns:

Great Northern Railway Company,  
Northern Pacific Railway Company,  
Chicago, Milwaukee, St. Paul & Pacific  
Railroad Company,  
Oregon Washington Railway & Navigation  
Company.

Nothing contained herein, however shall be construed to provide coverage for any operations of the above named concerns or equipment owned or operated by those concerns.

Effective Date of this Endorsement April 1, 1949.

Subject in all other respects to the limits of liability, exclusions, conditions and other terms of the policy.

Policy No. AS 793494, issued to Inland Motor Freight, Inc., et al., of Portland, Oregon.

Countersigned at Portland, Oregon, this 5th day of April, 1949.

ANCHOR CASUALTY  
COMPANY,

/s/ HENRY GUTHUNZ,  
President.

Form 10 4M 5-49

Endorsement No. 9

Deductible Property Damage Liability Applicable  
Only to Commercial Type Automobiles

It is agreed that such insurance as is afforded by the policy for Property Damage Liability applies subject to the following provisions:

1. \$50.00 shall be deducted from the total amount of all sums which the insured shall become obligated to pay by reason of the liability imposed upon him by law for damages on account of each accident, and the company shall be liable only for the difference between such deductible amount and the limit of the company's liability for each accident as stated in the policy.

2. The terms of the policy, including those with respect to notice of accident and the company's right to investigate, negotiate and settle any claim or suit, apply irrespective of the application of the deductible amount.



3. The company may pay any part or all of the deductible amount to effect settlement of any claim or suit, and upon notification of the action taken, the named insured shall promptly reimburse the company for such part of the deductible amount as has been paid by the company.

Subject in all other respects to all the agreements, general conditions, and special conditions of this policy. This endorsement, when countersigned by a duly authorized officer or representative of the Company and attached to Policy No. AS 793494, issued to Inland Motor Freight, Inc., et al., of Portland, Oregon.

Countersigned at Portland, Oregon, this 5th day of April, 1949.

ANCHOR CASUALTY  
COMPANY,

/s/ HENRY GUTHUNZ,  
President.

Service admitted.

[Endorsed]: Filed March 12, 1951.

Form 10 4M 5-49

[Title of District Court and Cause.]

## ANSWER

Comes now defendants herein named and answers Complaint of plaintiff as follows:

### I.

Defendants admit Paragraph I of plaintiff's Complaint.

### II.

Defendants admit Paragraph II of plaintiff's Complaint.

### III.

Defendants admit Paragraph III of plaintiff's Complaint.

### IV.

Defendants deny Paragraph IV of plaintiff's Complaint.

For further answer and by way of affirmative defense, defendants allege as follows:

### I.

That after the issuance of the insurance policy in April of 1949 as alleged in Paragraph III of plaintiff's complaint, and prior to the cancellation thereof, plaintiff told and advised defendants that the premium rates on said policy would have to be increased materially and that defendants would have to agree to said increase in rates to be effective from and after June 1st, 1949, and, in the alternative, in the event they declined to agree to said increased rates, that defendants and each of them

should seek and obtain other insurance coverage and that the said policy of April 1st, 1949, would be cancelled.

II.

That thereafter defendants did obtain other insurance coverage, whereupon the said policy of insurance from plaintiff was cancelled.

III.

That neither of defendants were advised in any manner either at the issuance of the policy of insurance of April, 1949, or at any time thereafter, that there was any penalty in connection with its cancellation by either party.

IV.

That defendants have paid to plaintiff all sums due in connection with said policy of insurance with plaintiff.

Wherefore, Defendants pray and demand that plaintiff's Complaint be dismissed and that they take nothing thereby, and that defendants have their costs herein expended.

BROWN & BROWN,

/s/ ROBERT M. BROWN,

Attorneys for Defendants.

Receipt of Copy acknowledged.

[Endorsed]: Filed March 12, 1951.

[Title of District Court and Cause.]

### REPLY

Comes now the plaintiff and replies to the answer on file herein, as follows:

#### I.

Denies each and every affirmative allegation contained in the first affirmative defense.

Wherefore, plaintiff prays judgment against the defendants as asked in the complaint.

WITHERSPOON,

WITHERSPOON & KELLEY,

/s/ WILLIAM V. KELLEY,

Attorneys for Plaintiff.

Receipt of Copy acknowledged.

[Endorsed]: Filed March 12, 1951.

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[Title of District Court and Cause.]

### REQUEST FOR ADMISSION UNDER RULE No. 36

Comes now the plaintiff pursuant to provisions of Rule No. 36 of the Rules of Civil Procedure, and requests the admission by the defendants of the truth of the following relevant matters of fact:

#### I.

That the policy of the Anchor Casualty Company involved in this case, copy of which is set

forth in plaintiff's voluntary Bill of Particulars, was in force for a period of sixty-one (61) days from April 1, 1949.

II.

That the gross receipts of the defendant Inland Motor Freight, Inc., for said period was \$456,-650.61, and the gross receipts of the defendant Pacific Highway Transport, Inc., was \$311,848.46 as testified to by the President of said defendant companies, Gus H. Nieman, pursuant to his deposition of March 26, 1951.

III.

That said defendants cancelled said policy, cancellation to be effective June 1, 1949, and that said cancellation was given to John Nelson of Bryan-Nelson Agency, Spokane, Washington.

IV.

That plaintiff's Exhibit "A" attached to said deposition of said Gus H. Nieman, being a copy of the pay roll auditor's report of Anchor Casualty Company, is a correct and true copy of the amounts making up the claimed earned premium of \$13,-441.24 as set forth in Paragraph IV of plaintiff's complaint and as taken from the books and records of the defendants.

WITHERSPOON,

WITHERSPOON & KELLEY,

/s/ WM. V. KELLEY,

Attorneys for Plaintiff.

Receipt of Copy acknowledged.

[Endorsed]: Filed May 3, 1951.



[Title of District Court and Cause.]

ADMISSION OF FACTS AS REQUESTED  
BY PLAINTIFF

Comes Now the defendants and each of them herein, and pursuant to request for admission of certain facts, as served upon defendants by plaintiff, and admits to the truth of the matters stated as follows:

I.

Admits the truth of the matter stated in Paragraph I of Plaintiff's request.

II.

Admits the truth of the matter stated in Paragraph II thereof.

III.

Admits the truth of the matter stated in Paragraph III thereof.

IV.

Admits the gross receipts as set forth on said Exhibit A and admits the arithmetical correctness in the computation set forth thereon, but denies the correctness of plaintiff's theory and manner of computation and denies that there was earned premium of \$13,441.24, or in any other sum in excess of \$8,319.84, which amount has already been paid by these defendants.

BROWN & BROWN,

/s/ ROBERT M. BROWN,

Attorneys for Defendants.

Receipt of Copy acknowledged.

[Endorsed]: Filed May 3, 1951.

[Title of District Court and Cause.]

### NOTICE OF FILING DEPOSITION

To the above-named defendants, and to Brown & Brown and Robert M. Brown, your attorneys:

You are notified that in accordance with the stipulation of the parties, the deposition of Gus Nieman of Spokane, Washington, was taken before Mr. Stanley D. Taylor, court reporter of the above-entitled court, at 1114 Old National Bank Building, Spokane, Washington, upon oral interrogatories. Said deposition was taken March 26, 1951, and was filed with the clerk of this court on March 27, 1951.

Dated this 27th day of March, 1951.

WITHERSPOON,

WITHERSPOON & KELLEY,

/s/ WILLIAM V. KELLEY,

Attorneys for Plaintiff.

Receipt of Copy acknowledged.

[Endorsed]: Filed March 28, 1951.

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[Title of District Court and Cause.]

### MOTION FOR SUMMARY JUDGMENT

Comes now the plaintiff, Anchor Casualty Company, and moves the Court for a summary judgment in the above-entitled case pursuant to the provisions of Rule 56 of the Rules of Civil Procedure.

This motion is based upon exhibits on file, pleadings herein and the deposition of Gus H. Nieman taken March 26, 1951, at 2:30 o'clock p.m. at 1114 Old National Bank Building, Spokane, Washington, before Stanley D. Taylor, Notary Public in and for the State of Washington, in the above-entitled cause.

WITHERSPOON,

WITHERSPOON & KELLEY,

/s/ WM. V. KELLEY,

Attorneys for Plaintiff.

Receipt of Copy acknowledged.

[Endorsed]: Filed May 3, 1951.

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[Title of District Court and Cause.]

### MOTION FOR SUMMARY JUDGMENT

Comes Now defendants above named and each of them and move for summary judgment dismissing complaint of plaintiff in the above-entitled matter.

This Motion is based upon pleadings on file herein and Stipulation and Admission of Facts on file herein, and the deposition of Gus H. Nieman, taken on March 26, 1951, and on file herein.

BROWN & BROWN,

/s/ ROBERT M. BROWN,

Attorneys for Defendants.

Receipt of Copy acknowledged.

[Endorsed]: Filed May 3, 1951.

[Title of District Court and Cause.]

### STIPULATION

The parties herein, through their respective attorneys, stipulate with respect to Paragraph IV of the complaint and Paragraph IV of the answer that the gross receipts of the defendant, Inland Motor Freight, Inc., during the alleged 61-day period was the sum of \$456,651.61; that under the plaintiff's theory upon said sum the aggregate earned premium at the rate so specified would amount to \$4109.85, and upon which the short rate penalty, if due, pursuant to cancellation would amount to \$2529.91; that the gross receipts of Pacific Highway Transport, Inc., during the alleged 61 days was \$311,848.46, upon which sum, under the plaintiff's theory, the earned premium would be, at the rate specified in said policy, \$4209.95, and upon which the short rate penalty for cancellation, if applicable, would amount to \$2591.53; that the total of said premiums and short rate penalties under the plaintiff's theory would be \$13,441.24 earned and becoming due the plaintiff under said policy; that defendants have paid the sum of \$8319.84 to plaintiff and that, if plaintiff's theory is correct, there would be a balance due and owing plaintiff of \$5121.40, together with interest thereon at the rate of 6% per annum from June 1, 1949, to the date of judgment herein.

It is further stipulated that defendants deny that there is any sum or sums owing plaintiff and that



this stipulation is not to be construed as an admission of any liability whatsoever by the defendants, and is entered into for the convenience of the Court and to save expense to the respective parties in the production of the records of the defendant Inland Motor Freight, Inc., which indicate for said 61-day period gross receipts of \$456,651.61, and the records of the Pacific Highway Transport, Inc., which reflect for the same period gross receipts of \$311,848.46.

Dated this 30th day of April, 1951.

WITHERSPOON,

WITHERSPOON & KELLEY,

/s/ WILLIAM V. KELLEY,

Attorneys for Plaintiff.

BROWN & BROWN,

/s/ ROBERT M. BROWN,

Attorneys for Defendants.

[Endorsed]: Filed May 5, 1951.

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[Title of District Court and Cause.]

### OPINION OF THE COURT

Plaintiff filed a motion for summary judgment and, on the same day, defendants filed a similar motion. The motions are based upon the pleadings, a stipulation of the parties, admissions of the defendants under Rule 36, and the deposition of the

individual who is the president of each of defendant corporations. From such sources the following undisputed facts appear:

On April 1, 1949, defendants were engaged in the operation of freight lines for the transportation of freight by motor trucks. Their motor vehicles were insured against property damage and bodily injury liability by plaintiff. The insurance policies ran for periods of one year and were renewed annually. The last policy, which ran from April 1, 1949, to April 1, 1950, was written on a printed form to which a number of endorsements were attached. One typed endorsement recited that the earned premium should be computed and paid monthly by applying to the gross receipts as therein defined the rate of \$.90 for defendants Inland Motor Freight, Inc., and \$1.35 for defendant Pacific Highway Transport, Inc. The endorsement stated that it was "Subject in all other respects to the limits of liability, exclusions, conditions and other terms of the policy."

On the last page of the policy, a section in print, headed "Cancellation" provided that:

"This policy may be canceled by the named insured by surrender thereof or by mailing to the company written notice stating when thereafter such cancellation shall be effective. This policy may be canceled by the company by mailing to the named insured at the address shown in this policy written notice stating when not less than five days thereafter such cancellation shall be effective. . . .

“If the named insured cancels, earned premiums shall be computed in accordance with the customary short rate table and procedure. If the company cancels, earned premiums shall be computed pro rata.”

Also, on the last page and following the text of the policy there was a table headed “Short Rate Cancellation Table—For Term of One year.” According to the table, 27 per cent was to be charged or retained when the policy had been in force 61 days.

The policy was canceled by defendants, the named insured, June 1, 1949, after it has been in force for 61 days. During that period the gross earnings of defendant Inland Motor Freight, Inc., was \$456,650.61 and the earned premium computed at the rate specified in the typed endorsement, mentioned above, was \$4,109.85. The gross earnings of defendant Pacific Highway Transport, Inc., for the 61-day period, was \$311,848.46, and the earned premium, \$4,209.95. Defendants have paid plaintiff the earned premiums in the amounts just stated. The question to be determined is whether defendants, because of their cancellation of the policy, should be charged according to its short rate cancellation provisions—that is to say, 27 per cent of the annual premium. Plaintiff contends that the short rate should be applied and that it should be computed by dividing the earned premium for the 61-day period by 61; then multiplying by 365 to arrive at the estimated annual premium. The short rate would be 27 per cent of that sum. By that



method of computation the unpaid balance of the premium—that is to say, the short rate premium less the amount paid—would be \$2,529.91 for defendant Inland Motor Freight, Inc., and \$2,591.53 for defendant Pacific Highway Transport, Inc.

Defendants contend that the endorsement providing for payment of monthly premiums on the basis of percentage of gross receipts is inconsistent with the short rate provisions of the policy, and creates an ambiguity which, according to well recognized rules of construction, should be construed against the insurer. They further assert that, since only 61 days of the policy period had elapsed at the time of cancellation and the amount of the annual premium could not then be ascertained, there was no basis for computation of the short rate of 27 per cent of the annual premium.

I cannot agree that there is any ambiguity in the policy. The provisions as to earned premiums and short rate on cancellation can both be enforced in accordance with established precedents hereinafter cited, if the parties to the insurance contract so intended. And there is nothing in the earned premium endorsement to indicate that the parties intended to nullify the provision for payment of a special short rate premium on cancellation of the policy by the insured. On the contrary, the endorsement specifically provides that it is subject “in all other respects” to the conditions and terms of the policy.

The provision for payment of monthly premiums did not change the policy from an annual to a



monthly contract. And it was not, as defendants' president testified in his deposition "a continuous policy" of insurance. The policy is complete in itself. It does not by its terms incorporate any portion of any other instrument or refer to any prior policy. The period is expressly stated to be one year.

The same endorsement which provided for monthly premiums, required the insured to pay a deposit premium of \$4,500.00 to be applied to the earned premium "for the last month of the policy period as computed above." On June 1, 1949, the policy was a valid and subsisting contract which by its terms would have expired on April 1, 1950. The right of cancellation which defendants exercised was derived from the insurance contract and their premium liability upon cancellation must be measured by the same instrument.<sup>1</sup>

Provisions in insurance policies for higher short rate premiums upon cancellation by the insured have been upheld by the courts in cases such as the instant one where the computation of premiums is based upon the pay roll or gross receipts of the insured for a definite period.<sup>2</sup>

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<sup>1</sup>Port Iron & Supply Co. v. Moore, 153 S. W. (2d) 319.

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<sup>2</sup>Aetna Life Ins. Co. v. American Zinc Lead & Smelting Co., 154 S. W. 827; Aetna Life Ins. Co. v. Kansas City Electric Light Co., 171 S. W. 580; Big Run Coal Co. v. Employers Indemnity Co., 174 S. W. 25; Joseph Weaver & Son v. Home Life & Accident Co., 221 S. W. 299; Maryland Cas. Co. v. Boise Street Car Co., 11 P. (2d) 1090.

Moreover, the method of computation of the short rate premium contended for by plaintiff as stated above—that is to say, the approximation of the insured's actual earnings for the policy period year, by obtaining the average daily gross receipts for the period the policy was in effect, and multiplying such average amount by 365—has been sanctioned.<sup>3</sup>

Plaintiff's motion for summary judgment will be granted.

/s/ SAM M. DRIVER,

United States District Judge.

Copies mailed counsel, West Publishing Company, and The Attorney General, June 19, 1951.

[Endorsed]: Filed June 18, 1951.

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[Title of District Court and Cause.]

### ORDER

This matter coming on duly and regularly for hearing this 3rd day of May, 1951, the plaintiff, Anchor Casualty Company, a corporation, appearing by its attorney, William V. Kelley of Witherspoon, Witherspoon and Kelley, and the defendants, Inland Motor Freight, Inc., a corporation, and Pacific Highway Transport, Inc., a corporation, appearing by their attorney, Robert M. Brown of Brown & Brown, on plaintiff's motion for Sum-

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<sup>3</sup>See cases cited in footnote 2.

mary Judgment, and upon a similar motion filed by the defendants, both motions being based upon the pleadings, a stipulation of the parties, admission of the defendants under Rule 36 and the deposition of Gus Nieman who is the president of each defendant corporation, and the Court having requested briefs of both parties and having taken the matter under advisement, and having filed a Memorandum Opinion herein on June 18, 1951, and being fully advised in the premises,

Now, Therefore, it is hereby Ordered, Adjudged and Decreed that the motion for Summary Judgment of plaintiff, Anchor Casualty Company, a corporation, be granted and that the motions for Summary Judgment of the defendants Inland Motor Freight, Inc., a corporation, and Pacific Highway Transport, Inc., be and the same are hereby denied, with an exception allowed to each defendant.

Done by the Court this 21st day of July, 1951.

/s/ SAM M. DRIVER,  
Judge.

Presented by:

/s/ WILLIAM V. KELLEY,  
Attorney for Plaintiff.

Notice of Presentment of the above-entitled Order is hereby waived.

.....,  
Attorney for Defendants.

[Endorsed]: Filed July 21, 1951.

In the District Court of the United States for the  
Eastern District of Washington, Northern  
Division

Civil Action No. 906

SUMMARY JUDGMENT

ANCHOR CASUALTY COMPANY, a Corpora-  
tion,

Plaintiff,

vs.

INLAND MOTOR FREIGHT, INC., a Corpora-  
tion, and PACIFIC HIGHWAY TRANS-  
PORT, INC., a Corporation,

Defendants.

The above matter came on for hearing on applica-  
tion of plaintiff, Anchor Casualty Company, a  
corporation, for summary judgment against the  
defendants, Inland Motor Freight, Inc., a corpora-  
tion, and Pacific Highway Transport, Inc., a cor-  
poration, and it appears that both plaintiff and  
defendants had hitherto made separate motions for  
summary judgments and the Court having hitherto  
granted the motion for summary judgment made by  
plaintiff Anchor Casualty Company, a corporation,  
and denied the motion for summary judgment on  
behalf of defendant corporations as shown by the  
order entered in the above-entitled cause on July  
21, 1951,

Now, Therefore, by reason of the law and the



premises, It Is Ordered, Adjudged and Decreed that the Anchor Casualty Company, a corporation, have judgment against the defendants Inland Motor Freight, Inc., a corporation, and Pacific Highway Transport, Inc., a corporation, for the sum of \$5,121.40 together with interest thereon at the rate of six per cent (6%) per annum from June 1, 1949, until this judgment is paid.

Done in Open Court this 30th day of July, 1951.

/s/ SAM M. DRIVER,

United States District Judge.

Presented by:

/s/ W. V. KELLEY,

Approved by:

/s/ L. W. THAYER, of  
BROWN & BROWN.

[Endorsed]: Filed July 30, 1951.

[Title of District Court and Cause.]

### NOTICE OF APPEAL

Notice is hereby given that Inland Motor Freight, Inc., a corporation, and Pacific Highway Transport, Inc., a corporation, defendants above named, hereby appeal to the United States Court of Appeals for the Ninth Circuit from the Final Judgment entered in this action on the 30th day of July, 1951.

BROWN & BROWN,

/s/ ROBERT M. BROWN,

Attorneys for Appellants, Inland Motor Freight, Inc., a Corporation, Pacific Highway Transport, Inc., a Corporation.

Receipt of Copy acknowledged.

[Endorsed]: Filed August 28, 1951.

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[Title of District Court and Cause.]

### STIPULATION

The parties herein stipulate, through their respective counsel, that the oral examination of Gus Nieman, President and Officer of the above-entitled corporate defendants, may be had before Stanley D. Taylor, court reporter, at 2:30 o'clock p.m. on Monday, March 26, 1951, at 1114 Old National Bank Building, Spokane, Washington, and that if not completed on said date may be continued to a date mutually convenient to the parties without

plaintiff waiving its right to inspect and subpoena all contracts, letters, memoranda and other data concerning that certain insurance policy referred to in Paragraph III of plaintiff's complaint.

Dated this 23rd day of March, 1951.

WILLIAM V. KELLEY,  
WITHERSPOON,  
WITHERSPOON & KELLEY,  
Attorneys for Plaintiff.

/s/ ROBERT M. BROWN,  
BROWN & BROWN,  
Attorneys for Defendants.

United States District Court, Eastern District of  
Washington, Northern Division

Civil No. 906

ANCHOR CASUALTY COMPANY, a Corpora-  
tion,

Plaintiff,

vs.

INLAND MOTOR FREIGHT, INC., a Corpora-  
tion, and PACIFIC HIGHWAY TRANS-  
PORT, INC., a Corporation,

Defendants.

#### DEPOSITION OF GUS H. NIEMAN

Be It Remembered that pursuant to the attached stipulation the above-entitled matter came on at

(Deposition of Gus H. Nieman.)

1114 Old National Bank Building, Spokane, Washington, on Monday, the 26th day of March, 1951, at 2:30 o'clock p.m. for the taking of the deposition upon oral examination of Gus H. Nieman.

Present and representing the plaintiff was William V. Kelley, of Witherspoon, Witherspoon & Kelley, attorneys at law, Spokane, Washington; present and representing the defendants was Robert M. Brown, of Brown & Brown, attorneys at law, Spokane, Washington.

After the witness Gus H. Nieman was sworn by Stanley D. Taylor, Notary Public in and for the State of Washington, to tell the truth, the whole truth and nothing but the truth in this proceeding, the following testimony was taken and the following proceedings were had, to wit:

Examination

By Mr. Kelley:

Q. What is your name?

A. Gus H. Nieman.

Q. And what position do you hold in the Inland Motor Freight, Inc.?

A. I'm president.

Q. And what position do you hold in the Pacific Highway Transport, Inc.?

A. President.

Q. And how long have you been president of those two organizations?

A. Since April, 1947.

Q. Directing your attention to this Anchor Casualty Company policy involved in this case, that



(Deposition of Gus H. Nieman.)

policy was in force a period of sixty-one days from April 1, 1949, was it?

A. I never really knew the anniversary date of the policy.

Q. I see. Can I take a look at your copy, Bob?

Mr. Brown: It's the same thing.

Q. (By Mr. Kelley): Is that the correct policy period, do you think, from April 1, 1949, to April 1, 1950?

A. That's the date I see that's on there, so apparently that was it.

Q. Directing your attention to paragraph four of the plaintiff's complaint, which your answer has denied, Mr. [2\*] Nieman, are the figures \$456,650.61 the correct amount of the gross receipts of the defendant Inland Motor Freight, Inc., during that sixty-one days that the policy was in effect?

A. I presume they're about correct.

Q. And are the figures correct of the gross receipts of the Pacific Highway Transport, Inc., in the sum of \$311,848.46 for the same period?

A. I believe they are. They sound correct.

Mr. Kelley: I suppose as far as that goes, Mr. Brown, I can get hold of an audit report and I can give it to you, and we can at least check that arithmetic so as to save time and trouble.

Mr. Brown: Yes. On the gross receipts I don't think there's any material dispute.

Q. (By Mr. Kelley): By the way, these figures could be ascertained to the penny, I suppose, by

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\* Page numbering appearing at foot of page of original Reporter's Transcript of Record.

(Deposition of Gus H. Nieman.)

reference to your books?           A. Yes, they could.

Q. When I say your books, I mean both the companies.           A. Yes.

Q. Are they located in Spokane, Mr. Nieman?

A. The Inland Motor Freight books are located here; the Pacific Highway Transport are located on the coast. However, I would have those [3] figures.

Q. You'd have those figures?           A. Yes.

Q. And who would have custody of the Inland Motor Freight books, who would be the individual?

A. Oney Riggs.

Q. And what position does he have with the company?           A. Secretary-treasurer.

Q. And he's in Spokane?           A. Yes.

Q. At the company's offices?           A. Yes.

Q. Where are the company's offices? I've forgotten.           A. 110 South Sheridan Street.

Q. And what's the situation with respect to the Pacific Highway Transport, Inc.?

A. Their offices are in Seattle, Sixth Avenue South and Holgate.

Q. And who would be the individual who had custody of those?           A. Adolph Ness.

Q. I was informed that the individual who made up the report checked your books. Do you happen to know—in other words, I got my figures in this complaint from an auditor who is supposed to have checked your books.           A. I think that's correct.

Q. The two company defendants in this case cancelled this [4] policy themselves, did they not?

(Deposition of Gus H. Nieman.)

A. I don't recall the exact transaction that took place regarding the cancellation. It all started because of a meeting I was called to in Seattle with Mr. Herb Gould of Gould & Gould, and there was myself and John Macdonald who is manager of Pacific Highway Transport, and John Nelson of Bryan & Nelson here, at that meeting when Mr. Gould informed us that because of our accident ratio that it was going to be necessary, that they were going to increase the premiums up to 50 per cent over what we were then paying, explaining to me that it wasn't the best type of insurance that they liked to carry, the risk was very great, and they didn't like to have to tell me that they were going to increase this insurance 50 per cent, knowing that it was quite a stiff amount, but told me that if I could find other coverage elsewhere I should do it, that they were not at all happy with this type of insurance; and it was then of course that I started looking around. I had looked around previous; in our business you're always looking for better deals, and after this meeting then I——

Q. Excuse me just a minute; about when was this meeting, do you recall?

A. Yes, it was about the latter part of January, I believe.

Q. Of what year? [5]

A. Of '48—wait a minute—'49 I believe was the year. The policy was cancelled in June, 1949. Yes. It was in the latter part of January or the first part of February, and so then realizing the situa-



(Deposition of Gus H. Nieman.)

tion being quite desperate, I really went out to look for some other coverage, and it was after I found this other coverage that I called Johnny Nelson on the phone and explained to him that I was going to cancel out June 1. I had no idea that the anniversary date of that policy was May, or I could have cancelled out sooner, and so he said "Well, that's all right, you mail me the policy," and I believe that's what I did, but I have no record of it.

Q. Let's see, who all were present at that meeting the latter part of January, 1949, or the first part of February?

A. John W. Macdonald, and of course myself, Johnny Nelson, and Herb Gould.

Q. And that was over in——

A. In Seattle. Johnny Nelson had called me one day and wanted to know when I was going to be in Seattle, that Herb Gould wanted to see me about this insurance, and I don't recall now what date that was, but I give him a date when I would be there, so Johnny said "Well, I'll be there and I'll meet you over there."

Q. Had you been carrying a similar type of insurance with [6] Gould & Gould?

A. We carried it all through Bryan & Nelson, who in turn I guess they sell it to Herb Gould and Gould. They broker it through them.

Q. Gould & Gould are sort of a wholesaler, so to speak?

A. Yes.



(Deposition of Gus H. Nieman.)

Q. Had you been covered by this Anchor Casualty Insurance Company for a number of years?

A. Several years. I don't recall exactly when we first went into Anchor, that is, when they put us in Anchor. I know that only three months previous to the time that I was called to Seattle we had another meeting over there, I was complaining about the high cost of the insurance, especially for the Pacific Highway Transport, and after doing a lot of talking regarding the matter they finally agreed to reduce my rate to 90 cents.

Q. The Pacific——

A. The Pacific Highway Transport, and then three months later they turned around and said they were going to increase it 50 per cent, and that's when they told me that they would suggest if I could find something better, to go get it.

Q. At this meeting you referred to the latter part of January or the early part of February, 1949, was anything said as to how the insurance policy was to be cancelled? [7]           A. No.

Q. By the way, when you had that meeting did you in fact have coverage in the Anchor Casualty Company?           A. Yes.

Q. Oh.

A. It was written with Anchor at that time.

Q. The reason I asked, I just noticed, for your own information, this policy goes from April 1, 1949, but I take it there was in force another policy?

A. Yes, there was an Anchor policy. The only

(Deposition of Gus H. Nieman.)

thing that I recall that was discussed regarding cancellation at that time was that they instructed or informed me that my rate would go up 50 per cent or they would have to cancel it.

Q. Well, was this increase of 50 per cent to take effect after the policy had expired?

A. Now, I couldn't say as to that because I didn't even know what the expiration date of the policy was. They just gave me 90 days, so that leads me to believe the meeting must have been the latter part of January, because they gave me 90 days to either pay this or find something else.

Q. What other insurance did you get?

A. We went in the Transport Indemnity.

Q. Isn't that the one that you or rather your company is [8] interested in forming?

A. Yes.

Q. Who all are in that?

A. Well, I couldn't tell you all the names. There's probably——

Mr. Brown: I'll object at this time as being not relevant to any issue in this case.

Mr. Kelley: By the way, I think you have a reservation under the rules anyway, as to the materiality, competency or relevancy, but I'll be glad to stipulate with you.

A. Shall I go ahead?

Q. Yes; he wanted to make that for the record.

A. There's at least 150 or more members in that; there may be three or four or five hundred, I don't know.

(Deposition of Gus H. Nieman.)

Q. Just to give me an idea, they're all truckers?

A. Yes, that's right.

Q. The nature of the Inland Motor Freight, Inc., and Pacific Highway Transport, Inc., they're trucking corporations?

A. The Inland Motor Freight, by the way, is a corporation, not "Inc."

Q. Oh, is that right? It's Inland Motor Freight, a corporation? A. That's right.

Q. I see; well, do you remember the date when you got this [9] other coverage that you mention in the Transport—— A. Indemnity?

Q. Yes. A. June 1, 1949.

Q. Well, do you recall how this particular policy, that is, the Anchor Casualty Company policy, was cancelled? Was the policy surrendered manually?

A. I don't recall now. If it was, and it was in my file, and I surrendered it, it would have my own number that I put on it. I could identify it that way, because I number all my policies, then I know where they're at and what they're for. I haven't the policy. Apparently I surrendered it.

Q. By the way, did you ever cancel other insurance with this company, this Anchor Casualty Company? A. No.

Q. At the time that you cancelled the policy that's involved in this suit I suppose you noticed the short rate cancellation table?

A. No, I didn't know anything about it. It was my understanding it was a gross receipts policy and based on that alone.

(Deposition of Gus H. Nieman.)

Q. What was your understanding as to that?

A. It was a continuous policy, as far as I was concerned, renewed from year to year, and the only premiums was [10] based on the gross revenue earned each month.

Q. Well, when you went into this particular policy you didn't figure that you were just going to have it for 90 days, did you?

A. Well, I don't remember when we went into it. We went into it before I came to Spokane.

Q. Well, I say, when you went into it, whenever that was, you didn't just figure you were going to have coverage for 90 days?

A. It was my understanding at the time that there was no expiration date of the policy. I didn't understand that there was any expiration date on the policy.

Q. Well, did you understand that you were only going to be covered for 90 days, was that your notion?

A. I didn't even know the policy expired, had no idea when the policy expired or when or why.

Q. Who did you deal with or who sold it to you?

A. John Nelson.

Q. He's the only one?

A. Yes. I'm not sure whether I ever got a copy of that policy. I doubt it very much. I don't recall seeing it. It could be. As a say, if I got it, I would have a number up here and on the back side both.

Q. You mean on the outside?

A. Yes, I usually have one on both sides, fold



(Deposition of Gus H. Nieman.)

them up in my [11] file like this, and I have a number so whenever I run through them I can catch it on either side.

Q. That's only a copy of your own policy?

A. Yes.

Q. You'd put a number right on the——

A. I'd write it right up along in here.

Mr. Brown: Do you have the original of the policy?

Mr. Kelley: I don't have it here, no.

Q. (By Mr. Kelley): I've got a copy of a letter that you wrote to Mr. Herb Gould, Jr., under date of November 25, 1949. You may have, in your file there, you may have your own office copy. You can look for it if you want to, but directing your attention to that last sentence there in that letter, you speak about an understanding. What is that?

A. That was the conversation that I explained a while ago that we had up there in his office in January or it might have been the first part of February of 1949. That's what I was referring to, because nothing was ever mentioned at that time about any short term cancellation period or expiration date of the policy.

Q. Let me ask you this: Have you ever in the past with this company or any other company made a deal whereby the insurance company would go on the risk for only 90 days and then allow a full rate cancellation? [12]

A. Yes. In fact, I cancelled another policy at the same time when I cancelled this one, which

(Deposition of Gus H. Nieman.)

was also handled by Bryan & Nelson, to the D. K. McDonald Company which carried the cargo insurance, and they didn't give me any short term cancellation. It was the same type of policy, in that it was a gross receipts policy.

Q. Did it have a short term cancellation table on it, do you know?      A. I don't know.

Q. What I was getting at, you know the cancellation clause always states it will be short rate, although you can contract otherwise?

A. Well, I can agree to that; that depends on the type of insurance. I never heard of it on this type of insurance, and we've written this type of insurance for years and years and years, in fact, for thirty some years we've bought this type of insurance, and this is my first experience on a short term cancellation, and we have cancelled before.

Q. You had cancelled before?      A. Yes, sir.

Q. But not with this particular company?

A. Not with that particular company.

Q. In addition to D. K. McDonald, can you recall any other company? [13]

A. No, I can't, because it was quite a number of years previous to this.

Q. I think you said a moment ago you furnished the experience figures yourself on which this premium was based?

A. Not the experience figures; the gross receipts figures. They, however, were audited I believe by one of the insurance company auditors.

(Deposition of Gus H. Nieman.)

Q. Well, this policy that's involved here then is really a renewal of a previous insurance arrangement with the same company?

A. You mean Gould & Gould?

Q. Yes.

A. I presume that's what it was. It was a continuous policy until terminated.

Q. Well, when you went into this policy on or about April 1, 1949, did Gould & Gould, and more particularly Mr. Herbert Gould, Jr., definitely advise you and Bryan & Nelson, the agent, that at the end of 90 days if the experience was unprofitable that Anchor Casualty Company would have to cancel without further discussion, or what was the situation?

A. I don't think it was exactly like that.

Q. How do you recall?

A. The thing that brought the whole thing on, in December of 1948 we had a serious accident right out here on [14] Sunset Highway near the airport, and that was when they called us in for that meeting, and there wasn't anything mentioned about future experience. They were talking about experience as of now.

Q. Do you recall the date that you put your coverage—or I think you told me, June 1, 1949, is when you put it in this Transport Company?

A. Right. I could have just as well have made it May. If I had any idea that there was an expiration date on that policy at that time, I would have.



(Deposition of Gus H. Nieman.)

Q. I don't quite follow you on that; I don't believe I understand you.

A. Well, I didn't understand that the expiration date of this policy was May 1. In fact, I didn't have any idea when the expiration date of that policy was or that there was any expiration date at all. Had I known that, I could have put this transport idemnity company insurance in effect on May 1 just as well as June 1, and the only reason I let it run two more months as it was was to give Bryan & Nelson and Gould & Gould an opportunity—not to try to give them too big a shock too quick; that was the purpose of it.

Mr. Brown: Gus, why do you talk about May 1? I don't understand you on that myself.

A. Well, I should have said April 1 instead of May 1. I [15] didn't—in fact, I never knew until today that there was an April 1 expiration date on that policy, because nothing had ever been mentioned when we discussed it with Herb Gould there or with Johnny Nelson at any time that the expiration date of that policy was April 1.

Q. Well, was that meeting that you've mentioned the latter part of January or the first part of February, 1949, was that the only meeting you had with Gould & Gould?

A. No; we had a meeting about a year prior to that, when Mr. Gould said that we were going to have to do a better job as far as our accident ratio was concerned, and we did that spring hire



(Deposition of Gus H. Nieman.)

a safety director, and we had, for some unknown reason or other, we had a very good year, and then in the fall we had another meeting and I discussed the matter of getting a reduction, which he allowed me, and then right after that we had that accident, then he called me back in there to increase the rates 50 per cent.

Q. Well, the big difference between you and the company is that the company wants to cancel this short rate, and your position is that it should be cancelled on a pro-rate basis?

A. Well, my position is that there's no such thing as a short rate cancellation on a policy of this kind. It's written on a gross receipt basis, and when the end of the [16] month comes and I've got my total receipts, when I pay them off I'm all done. That was my understanding all the time.

Q. Well, at least now that this lawsuit has ensued, at least the difference between your positions is that you feel that the cancellation should not be short term——

A. Correct.

Q. ——whereas the company takes the opposite position.

Mr. Kelley: Mr. Brown, if I gave you a copy of the payroll auditor's report, then Mr. Nieman at his leisure and convenience could just pass it on, don't you think we could check the arithmetic and technically we could continue this until you determined in your own mind if this was right?

The Witness: I'll agree that the figures are right, the gross receipts figures. They're right.

(Deposition of Gus H. Nieman.)

Mr. Kelley: As I say, I haven't double checked this myself, and in fact I'm not going to.

Mr. Brown: They're so close, Bill, we wouldn't dispute them.

Mr. Kelley: Then what I was getting at, there would probably be no reason to subpoena your men or fuss around about the books?

Mr. Brown: No, not in the least.

Mr. Kelley: It's just the pure construction [17] of the contract, whether or not Mr. Nieman's position is correct or the company's is correct, that's about it.

Mr. Brown: I would like you to explain to me sometime, not now, your computation in arriving at the figures that you do as shown in the complaint.

Mr. Kelley: Well, suppose I do this; we can have this marked as a plaintiff's Exhibit A, and you can take it, and the computation is on there.

Mr. Brown: All right.

(Whereupon, copy of payroll auditors report was marked as Plaintiff's Exhibit "A" to this deposition.)



COPY

COPY

PAYROLL AUDITORS REPORT  
ANCHOR CASUALTY COMPANY

SAINT PAUL, MINNESOTA

ASSURED INLAND MOTOR FREIGHT ET AL  
ADDRESS 1001 - S. E. Water, Portland, Washington  
LOCATIONS \_\_\_\_\_  
POLICY NO. AB 793494 DEP. PREM. \_\_\_\_\_ MIN. PREM. \_\_\_\_\_ ENDORSEMENTS \_\_\_\_\_  
AGENT \_\_\_\_\_  
AUDIT PERIOD FROM 4-1 1949 TO 6-1 1949  
EXPIRATION CANCELLATION X PERIODIC 8/R

CODES	CLASSIFICATIONS	RATES	PAYROLL ESTIMATED	PAYROLL FOR ADJUSTMENT	PREMIUM
	INLAND MOTOR FREIGHT				
	Gross Receipts				
	April 225,258.56				
	May 31 231,391.05				
	456,650.61				
	$456,650.61 \div \text{by } 61 \text{ days} = 7486.07 \times 365 = 2,732,415.55 \times .434 \text{ B. I. \& .466 P. D.}$				
	$= 11,858.68 \text{ B.I. \& } 12,733.05 \text{ P. D.} \times .27\%$				
			INLAND MOTOR FREIGHT		3201.84 B.I.
					3437.92 P.D.
	P. H. T.				
	Gross Receipts				
	April 151,555.57				
	May 160,292.89				
	311,848.46				
	$311,848.46 \div \text{by } 61 \text{ days} = 5112.27 \times 365 = 1865978.55 \times .651 \text{ B. I. \& .699 P. D.}$				
	$= 12147.52 \text{ B. I. \& } 13043.19 \text{ P. D.} \times .27\%$				
					3279.69 B. I.
					3521.66 P. D.

RECORDS EXAMINED - CASH BOOK GEN'L LEDGER PAYROLL BOOK CHECK STUBS O A B U. C TOTAL 13441.11  
CONDITION OF RECORDS - GOOD FAIR POOR NONE

NAMES	DUTIES	SALARY	CODE	PREVIOUSLY BILLED
PRES.				* ADDITIONAL PREM.
V. PRES.				* RETURN PREM.
SEC.				
PARTNERS				

PRF. EX "A" to NIEMAN  
DEPOSITION.  
3-26-51  
S.D.T.





(Deposition of Gus H. Nieman.)

Mr. Kelley: And if you find out, if you come to the conclusion that computation is correct, then we can agree that that's under the short rate theory, at least, that's how much would be owing. Of course, if it doesn't apply, why, nothing is. I'll hand this to Mr. Nieman.

Q. (By Mr. Kelley): Directing your attention to——

A. Yes, those figures are—the gross receipt figures are all right.

Mr. Kelley: Well, then, somebody can check the arithmetic; it won't be necessary for us to do that. With that understanding we can carry over, continue this finally until you've had a chance to do that. I haven't anything else to inquire about [18] today.

State of Washington,  
County of Spokane—ss.

I, Stanley D. Taylor, United States Court Reporter and Notary Public in and for the State of Washington, and authorized to administer oaths by law of the State of Washington, do hereby certify:

That the within deposition of Gus H. Nieman was taken by me at 1114 Old National Bank Building, Spokane, Washington, on the 26th day of March, 1951; that the witness was first sworn to tell the truth, the whole truth and nothing but the truth; that the examination has been taken by me in shorthand and reduced to typewriting by me,

(Deposition of Gus H. Nieman.)

and that the within and foregoing, being typewritten sheets numbered 1 to 18 inclusive, exclusive of this page, is a true, accurate and complete transcript of the questions asked and of the answers given by said witness; that the submission to and signing of said transcribed deposition by the witness was waived.

In Witness Whereof I have hereunto set my hand and affixed my official seal this 27th day of March, 1951.

[Seal]      /s/ STANLEY D. TAYLOR,

Notary Public in and for the State of Washington,  
residing at Spokane.

[Endorsed]: Filed May 3, 1951. [19]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

United States of America,  
Eastern District of Washington—ss.

I, A. A. LaFramboise, Clerk of the United States District Court for the Eastern District of Washington, do hereby certify that the documents annexed hereto are the Original

Complaint.

Voluntary Bill of Particulars.

Answer.

Reply.

Request for Admissions under Rule 36.

Admissions of facts as requested by Plaintiff.

Notice of filing Deposition.

Deposition of Gus Nieman.

Plaintiff's Motion for Summary Judgment.

Defendant's Motion for Summary Judgment.

Stipulation dated April 30, 1951.

Opinion of the Court.

Order granting Plaintiff's Motion for Summary Judgment.

Summary Judgment.

Notice of Appeal.

Bond on Appeal.

Designation of Record.

on file in the above-entitled cause, and that the same constitute the record for hearing of the Appeal from the Judgment of the United States District Court for the Eastern District of Washington, in



the United States Court of Appeals for the Ninth Circuit, as called for by the Appellant in his designation of record on Appeal.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court, at Spokane, in said District, this 5th day of October, A.D. 1951.

[Seal]      /s/ A. A. LaFramboise,

Clerk of said District Court.

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[Endorsed]: No. 13127. United States Court of Appeals for the Ninth Circuit. Inland Motor Freight, Inc., a Corporation and Pacific Highway Transport, Inc., a Corporation, Appellants, vs. Anchor Casualty Company, a Corporation, Appellee. Transcript of Record. Appeal from the United States District Court for the Eastern District of Washington, Northern Division.

Filed October 8, 1951.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals  
for the Ninth Circuit

No. 13127

INLAND MOTOR FREIGHT, INC., a Corporation,  
and PACIFIC HIGHWAY TRANSPORT, INC., a Corporation,

Appellants,

vs.

ANCHOR CASUALTY COMPANY, a Corporation,  
tion,

Appellee.

### STATEMENT OF POINTS

Come Now appellants above-named and set forth the following points upon which said appellants intend to rely: That the District Court of the United States for the Eastern District of Washington, Northern Division, erred in granting appellee's motion for summary judgment and in denying appellants' motion therefor, upon the following grounds:

#### I.

The short rate cancellation provision of the basic policy form here used was not applicable because the insurance contract was altered by endorsement as to premium and method of payment, and

#### II.

The short rate cancellation provision of the basic policy form here used was not applicable here

because appellee requested and endorsed the cancellation of said policy.

BROWN & BROWN,

/s/ ROBERT M. BROWN,

Attorneys for Appellants.

Receipt of Copy acknowledged.

[Endorsed]: Filed October 22, 1951.